



## **DEPARTMENT OF THE INTERIOR**

### **National Indian Gaming Commission**

#### **25 CFR Part 537**

#### **RIN 3141-AA58**

### **Background Investigations for Persons or Entities with A Financial Interest in Or Having A Management Responsibility for A Management Contract**

**AGENCY:** National Indian Gaming Commission, Department of the Interior.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The National Indian Gaming Commission proposes to amend its procedures for processing a request for approval of a management contract under the Indian Gaming Regulatory Act. The proposed amendments make the following changes to the current regulations. The regulations will now require a background investigation of all persons who have 10 percent or more direct or indirect financial interest in a management contract. The regulations will also require a background investigation of all entities with 10 percent or more financial interest in a management contract. The regulations now require a background investigation of any other person or entity with a direct or indirect financial interest in a management contract otherwise designated by the Commission. The regulations authorize the Chair, either by request or unilaterally, to exercise discretion to reduce the scope of the information to be furnished and background investigation to be conducted for certain entities.

**DATES:** Written comments on this proposed rule must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any one of the following methods, however, please note that comments sent by electronic mail are strongly encouraged.

- Federal eRulemaking Portal: Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email comments to:* [information@nigc.gov](mailto:information@nigc.gov).
- *Mail comments to:* National Indian Gaming Commission, 1849 C Street, NW., MS 1621, Washington, DC 20240.
- *Fax comments to:* National Indian Gaming Commission at 202-632-0045.

**FOR FURTHER INFORMATION CONTACT:** Heather McMillan Nakai at (202) 632-7003 or by fax (202) 632-7066 (these numbers are not toll free).

## **SUPPLEMENTARY INFORMATION:**

### **I. Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

### **II. Background**

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100-497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (“NIGC” or “Commission”) and set out a comprehensive framework for the regulation of gaming on Indian lands. On January 22, 1993, the NIGC published a final rule in the Federal Register called *Background Investigations for Person or Entities with a Financial Interest in a Management Contract*, 58 FR 5831. The rule added a new part to the Commission's regulations implementing the mandates of the Indian Gaming Regulatory Act of 1988 by establish the requirements and procedures for the approval of management contracts concerning Indian gaming operations and the conduct of related background investigations. The Commission has substantively amended them numerous times, most recently in 2012 (77 FR 47516).

### **III. Development of the Rule**

On, June 9, 2020<sup>1</sup>, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the management contract process. Prior to consultation, the Commission released proposed discussion drafts of the regulations for review. The proposed amendment to the management contract regulations were intended to improve the Agency's efficiency in processing management agreements and background investigations, clarify existing regulations, and provide guidance on extending management contracts. The Commission held two virtual consultation sessions in July of 2021 to receive tribal input on the possible changes.

The Commission reviewed all comments and now proposes these changes which it believes will improve the Agency's efficiency in processing background investigations.

### **IV. Regulatory Matters:**

#### *Regulatory Flexibility Act*

The rulemaking will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

#### *Small Business Regulatory Enforcement Fairness Act*

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rulemaking does not have an effect on the economy of \$100 million or more. The proposed rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions, nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

#### *Unfunded Mandate Reform Act*

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

### *Takings*

In accordance with Executive Order 12630, the Commission has determined that the proposed rule does not have significant takings implications. A takings implication assessment is not required.

### *Civil Justice Reform*

In accordance with Executive Order 12988, the Commission has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the order.

### *National Environmental Policy Act*

The Commission has determined that the rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

### *Paperwork Reduction Act*

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget as required by 44 U.S.C. 3501, et seq., and assigned Office of Management and Budget (OMB) Control Number 3141-0004.

### *Tribal Consultation*

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The

NIGC's consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes.

Pursuant to this policy, on June 9, 2020<sup>1</sup>, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the management contract process.

#### **List of Subjects in 25 CFR Part 537**

Administrative practice and procedure, Gambling, Indians--business and finance, Indian—Indian lands, Indians--tribal government.

For the reasons discussed in the Preamble, the Commission proposes to amend its regulations at 25 CFR part 537 as follows:

#### **PART 537--BACKGROUND INVESTIGATIONS FOR PERSONS OR ENTITIES WITH A FINANCIAL INTEREST IN, OR HAVING MANAGEMENT RESPONSIBILITY FOR, A MANAGEMENT CONTRACT**

1. The authority citation for part 537 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

2. Amend §537.1 by revising paragraphs (a)(3) through (5) and adding paragraph (d) to read as follows:

##### **§537.1 Applications for approval.**

(a) \* \* \*

(3) All persons who have 10 percent or more direct or indirect financial interest in a management contract;

(4) All entities with 10 percent or more financial interest in a management contract; and

(5) Any other person or entity with a direct or indirect financial interest in a management contract otherwise designated by the Commission.

\* \* \* \* \*

(d) For any of the following entities, or individuals associated with the following entities, the Chair may, upon request or unilaterally, exercise discretion to reduce the scope of the information to be furnished and background investigation to be conducted:

(1) Tribe as defined at 25 CFR 502.13;

(2) Wholly owned tribal entity;

(3) National bank; or

(4) Institutional investor that is federally regulated or is required to undergo a background investigation and licensure by a state or tribe pursuant to a tribal-state compact.

**Dated:** November 18, 2021, Washington, DC.

**E. Sequoyah Simermeyer,**  
*Chairman.*